

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

William J. Carey

v.

Case No. 09-cv-91-PB

Northern NH Correctional
Facility, Warden

O R D E R

William Carey presents two claims in his current habeas corpus petition. He first argues that the Parole Board violated his right to equal protection by paroling other inmates without paroling him. Next he claims that the state superior court violated his right to due process by dismissing his state court habeas corpus petition without a hearing. The warden has challenged both claims with a motion for summary judgment.

Carey is barred from raising his equal protection claim because he failed to present the claim in the notice of discretionary appeal he filed with the state supreme court. Under state law, an appellant forfeits his right to further litigate an issue that he fails without justification to present in a notice of appeal. Carey has not even attempted to avoid the procedural bar that ordinarily results when an appellant fails to raise a potential claim in a notice of appeal. He has not

established either cause or prejudice for his procedural default. Nor has he otherwise explained how applying the procedural bar rule here would result in manifest injustice.

Carey's due process claim fails on the merits. Although he alleges judicial bias, he produces no evidence to support his claim. Nor has he explained how the court's failure to hold a hearing on his petition violates his right to due process.

The respondent's motion for summary judgment ([Doc. No. 12](#)) is granted.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

October 14, 2009

cc: William J. Carey, pro se
Elizabeth Woodcock, Esq.